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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal-State Joint Board on
Universal Service

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) CC Docket No. 96-45
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AT&T PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") petitions the Commission for reconsideration and clarification of certain rulings in its Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306, released November 2, 1999 ("Order") and published in 64 Fed. Reg. 67416 (December 1, 1999), in the Commission's Universal Service proceedings. As shown in Section I, a new entrant that wins the customer should get the full measure of high-cost support that the incumbent was receiving for the line, even if the entrant is using unbundled network elements ("UNEs"). As AT&T demonstrates in Section II, to avoid creating arbitrage opportunities, the Commission should require that support be targeted to the high-cost deaveraged UNE zones and distributed on a uniform per-line basis within each zone. Finally, as discussed in Section III, the Commission should clarify that high-cost support must be used in wire centers that are targeted as recipients of support.

I. A NEW ENTRANT THAT WINS THE CUSTOMER SHOULD GET THE FULL MEASURE OF HIGH-COST SUPPORT THAT THE INCUMBENT WAS RECEIVING FOR THE LINE.

The Commission expressly recognizes that "federal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and

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conclude[s] that the *same* amount of support (i.e., either the forward-looking high-cost support amount or an interim hold-harmless amount) received by an incumbent LEC should be fully portable to competitive providers." Order, ¶ 90 (emphasis added). Indeed, the Commission emphasizes that "[t]o ensure competitive neutrality, . . . a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line, including any interim hold-harmless amount." *Id.* It further states that "[w]hile hold-harmless amounts do not necessarily reflect the forward-looking cost of serving customers in a particular area, . . . this concern is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors. Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent." *Id.*

Notwithstanding these indisputably correct observations, the Commission has set up a scheme that will systematically deny new entrants the same level of USF support that the incumbent had received for the line, by holding that:

"where a competitive eligible telecommunications carrier is providing service to a high-cost line exclusively through unbundled network elements (UNEs), that carrier will receive the universal service support for that high-cost line, not to exceed the cost of the unbundled network elements used to provide the supported services. The remainder of the support associated with that element, if any, will go to the incumbent LEC." Order, ¶ 91.

This aspect of the Order must be reconsidered. Although the Commission refers back to the First Report & Order¹ (¶ 287) for this holding, the facts are now entirely distinguishable.

¹ Federal-State Joint Board on Universal Service Reform, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997 ("First Report & Order").

In the First Report & Order (¶ 174), the Commission was concerned about the arbitrage opportunities that would become available if a new entrant were able to get portable support *before* the Commission had implemented the forward-looking cost support mechanism. The Commission there held that in "order not to discourage competition in high-cost areas, we adopt the Joint Board's recommendation to make carriers' support payments portable to other eligible telecommunications carriers *prior* to the effective date of the forward-looking mechanism." First Report & Order, ¶ 287 (emphasis added). In that context, the Commission limited the amount of USF support that a new entrant would receive to the cost of the unbundled network elements used to provide the supported services, with the remainder going to the ILEC to cover the ILEC's economic costs of providing that element.

In the current Order, the Commission has taken three critical steps that make this split support both entirely unnecessary and profoundly anticompetitive. First, the Order establishes and implements, effective January 1, 2000, a forward-looking high-cost support mechanism for non-rural LECs, which in itself makes the holding of the First Report & Order inapposite.² Second, to avoid uneconomic incentives for entry in low-cost areas and to ensure that the full measure of necessary support is available to entrants in the high-cost

² Although the Commission has delayed the provision of forward-looking support targeted to high-cost wire centers until the third quarter of 2000 to permit adequate time to analyze LEC wire center line count data filed December 30, 1999, carriers will be made whole retroactively to January 1, 2000. Federal-State Joint Board on Universal Service Reform, CC Docket No. 96-45, Nineteenth Order on Reconsideration, FCC 99-396, released December 17, 1999, ¶ 10 ("Nineteenth Order on Reconsideration"). Accordingly, AT&T's instant petition, requesting that the new entrant get the full measure of high-cost support that the incumbent had received for the line, remains entirely valid.

areas, the Commission targets the distribution of both forward-looking cost-based and hold-harmless support to the specific high-cost serving wire centers.³ Order, ¶¶ 71-75. Third, the Commission lifts the stay of its section 251 pricing rules, thereby requiring the states to establish different rates for unbundled network elements in at least three geographic areas in each non-rural study area within the state to reflect geographic cost characteristics. Order, ¶¶ 119-120.

In order to avoid competitive harm and given the implementation of support based on forward-looking cost, targeting of support to high-cost serving wire centers, and deaveraged UNEs, the new entrant should get the *full* measure of high-cost support that the incumbent had received for the line, regardless of whether the entrant is using entirely its own facilities or providing service via UNEs. Order, ¶ 90. Like the incumbent, the new entrant also has costs that are in addition to the cost of the UNEs and should receive the full measure of support. There is nothing unfair about this to the incumbent because the incumbent will be compensated by the new entrant for the full forward-looking cost of the UNEs that it is providing to the entrant. Indeed, if the support amount above the cost of the UNEs were to go to the incumbent, the incumbent would be compensated above economic cost even though it is no longer serving the customer. The paradigm that the Commission has established is anticompetitive because the incumbent would keep part of the support

³ As discussed in Section II *infra*, AT&T urges the Commission to reconsider its invitation to state commissions to file waiver requests to re-target the high-cost support. As AT&T shows, the Commission should *require* the states to target the high-cost support to be coterminous with the high-cost UNE zones determined by the states.

which belongs to the *customer* not the incumbent, even though the incumbent has failed to retain the customer in the market.

II. THE COMMISSION SHOULD REQUIRE THAT SUPPORT BE TARGETED TO THE HIGH-COST DEAVERAGED UNE ZONES.

Although the Commission has targeted high-cost support to specific serving wire centers, it has expressly permitted states to file petitions for waiver of the targeting rules, to enable the states to target support to an area different than the wire centers selected by the Commission, for example, the UNE zone. Order, ¶¶ 76, 86. AT&T believes that the Commission should *require* states to target support based on UNE zones so that support and the underlying costs of the elements used to provide service are more closely aligned. Indeed, the Commission had stayed its rule requiring the geographic deaveraging of UNEs, in part, until it resolved issues of targeting high-cost.⁴ Now that the Commission has achieved that objective, it makes no sense to proceed by allowing states to set UNE cost zones as if these issues were never linked. As GTE has explained, "use of different zones for USF, UNE loops and SLC could lead to a competitive imbalance and uneconomic arbitrage and therefore should be avoided."⁵ For example, if different zones are set for the USF and UNE loop rates, universal service funding may not align with costs.

As explained in the CALLS Reply Brief, "[t]o deaverage one set of prices or support to a different geographic level than the others will introduce additional arbitrage

⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996: Deaveraged Rate Zones for Unbundled Network Elements, CC Docket No. 96-98, Stay Order, FCC 99-86, released May 7, 1999.

⁵ GTE Comments, filed October 29, 1999, in Access Charge Reform, et al. (LEC Pricing Flexibility FNPRM), CC Docket Nos. 96-262, 94-1, 98-63, 98-157, at 13.

opportunities. As an example of the arbitrage opportunities that can be created by using different geographies for UNE-pricing and universal service, consider the following two exchanges. The first exchange is in the lower cost portion of the UNE zone. If universal service is available on a wire center basis, but UNEs are priced on a more aggregated basis, then the entrant purchasing the UNE pays a UNE price above the cost for that wire center due to averaging within the zone, but receives universal service support based only on the lower cost for the wire center. On the other hand, if the wire center has above-average costs, then the UNE purchaser would pay an averaged, below-wire-center-cost rate for the UNE, but potentially could collect higher universal service support based on the wire center's own costs."⁶ Providing high-cost support on a UNE zone basis and with a uniform amount of per-line support within each zone ensures that UNE prices and universal service support maintain a consistent relationship and avoids the foregoing undesirable consequences. The alignment of UNE cost and USF support would furthermore give entrants a better sense of the support that they would receive in a given zone before embarking on the decision to purchase UNEs. Moreover, requiring carriers to use the same zones for UNE loop and USF would avoid the need for the Commission to review of a multitude of state waiver requests.

⁶ CALLS Reply Comments, filed December 3, 1999, in Price Cap Performance Review for Local Exchange Carriers, et al., CC Docket Nos. 94-1, 96-45, 99-249, 96-262, at 15.

III. THE COMMISSION SHOULD CLARIFY THAT HIGH-COST SUPPORT MUST BE USED IN WIRE CENTERS THAT ARE TARGETED AS RECIPIENTS OF SUPPORT.

Section 254(e) of the Communications Act states that carriers must use universal service support "only for the provision, maintenance and upgrading of facilities and services for which the support is intended." Accordingly, the Commission has properly required the states to certify that high-cost support received by non-rural carriers in their state is being used appropriately consistent with this mandate. Order, ¶ 95. The Commission has also appropriately given the states the flexibility how to comply with this objective. For example, a state could adjust intrastate rates based on the federal support received or it could require carriers to use the support to upgrade facilities in rural areas. Order, ¶ 96.

The Commission provides that "states can direct carriers to spend the federal support in a manner consistent with section 254(e), though not necessarily in the wire center to which the support was targeted." Order, ¶ 83. AT&T asks the Commission to clarify this last point to ensure that a LEC must use the support within the group of wire centers to which it was targeted. For example, a LEC that receives high-cost support for 20 wire centers in a study area may use that support to upgrade facilities in all 20 wire centers or it may decide to use all of the support received in five of those wire centers. What it may *not* do is use any of the support in wire centers, for example those in low-cost areas, that are not targeted for support. If it did so, it would create a competitive imbalance in favor of the incumbent and against new entrants that elected to provide service initially only in the low-cost wire centers and that therefore would not be receiving any support. With this clarification, the Commission would ensure that support would be used to benefit the high-cost areas, as intended, and could not be used anticompetitively by the incumbent.

CONCLUSION

To the extent and for the reasons stated above, the Commission should reconsider and clarify its Ninth Report & Order and Eighteenth Order on Reconsideration.

Respectfully submitted,

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January 3, 2000

CERTIFICATE OF SERVICE

I, Denise M. Dagostino, do hereby certify that on this 3rd day of January, 2000, a copy of the foregoing "AT&T Petition for Reconsideration and Clarification" was served by U.S. first class mail, postage prepaid, on the parties named on the attached Service List.

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Denise M. Dagostino

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